IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3698 of 1992

with

SPECIAL CIVIL APPLICATION No 7069 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LATABEN C PARMAR

Versus

SUNAV MEDICAL SOCIETY

Appearance:

1. Special Civil Application No. 3698 of 1992
   NOTICE SERVED for Petitioner No. 1
   MR PC MASTER for Respondent No. 1
2. Special Civil Application No. 7069 of 1993
   MR PC MASTER for Petitioner No. 1
   NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/11/2003

COMMON ORAL JUDGEMENT

In both the petitions, since there is a common challenge to the award passed by the Labour Court in Reference (LCN) No.938 of 1988, these petitions are disposed of by this common judgement and order. So far as Special Civil Application No.3698 of 1992 is concerned, the same is filed by the petitioner challenging the order dated 28.12.1991 passed by the Labour Court in Reference (LCN) No.938 of 1988 by which the Labour Court partly allowed the reference of the petitioner and the petitioner was ordered to be reinstated on her original post by way of fresh appointment and without payment of back wages for the interim period. The respondent-management has also filed Special Civil Application No.7069 of 1993 challenging the said order of the Labour Court insofar as it relates to reinstatement order. Accordingly, both these matters are now disposed of finally by this order.

2 The learned advocate, who was appearing for the petitioner in Special Civil Application No.3698 of 1992, was subsequently elevated to the Bench of this Court. Thereafter even though notices have been served, the petitioner has not engaged any other advocate. So far as Special Civil Application filed by the management is concerned, the learned advocate Mr P.C. Master is appearing for the institution and I have heard him in connection with both the Special Civil Applications.

3 So far as controversy in question is concerned, it is required to be noted that the petitioner of Special Civil Application No.3698 of 1992 (hereinafter referred to as "the workman") was appointed as a staff nurse in the hospital by the order dated 14th April, 1980. According to the said workman, her services were terminated with effect from January, 1983 without giving any reasons. Since the said order was passed without paying retrenchment compensation, the concerned workman raised industrial dispute which was ultimately referred to the Labour Court for adjudication and was numbered as Reference (LCN) No.938 of 1988.

4 The management has taken a stand before the Labour Court that the concerned workman has misbehaved with the staff and that she has misbehaved with the staff members by using abusive language and that though she was required to take temperature of a patient, she had handed

over said responsible work to a peon. According to the respondent, the petitioner-workman had thereafter tendered her apology. The aforesaid aspect is dealt with in paragraph 6 of the award by the labour Judge. Before the labour court, the parties have also been given liberty to lead fresh evidence. The Labour Court thereafter, after considering the facts and circumstances, and after considering the evidence on record, came to the conclusion that the concerned workman had acted in an irresponsible manner and that an important work was handed over to a peon, i.e. recording of temperature of a patient in the hospital. The Labour Court has also considered the fact that the concerned workman had tendered the apology before the management and has also found that the concerned employee was gainfully employed. Considering the aforesaid aspect of the matter, the Labour Court, by the impugned order, passed an order in favour of the concerned workman by ordering reinstatement by way of fresh appointment without any back wages. Being aggrieved by the aforesaid order of the Labour Court, by which the Labour Court has denied the past service and back wages, the concerned workman has filed Special Civil Application No.3698 of 1992. So far as the management is concerned, it has also challenged the order of the Labour Court by which the Labour Court has ordered reinstatement of the original workman by way of fresh appointment.

5 Mr P.C. Master, the learned counsel for the respondent-management submitted that the Labour Court has committed an error by granting the reinstatement. He has also submitted that since the concerned workman has already admitted the guilt, it is not required even to hold the enquiry. He further submitted that when the misconduct is very serious in nature and as the workman has entrusted the work of taking temperature to a peon and has acted in a most irresponsible manner by abusing staff members as well as the patients and their relatives, this is not a fit case in which the Labour Court should have granted reinstatement even as a fresh appointment. He has also supported the order of the Labour Court in so far as it denies the benefit of back wages.

6 I have heard Mr Master for the management and have also gone through the award of the Labour Court. So far as the petition filed by the workman about non-granting of back wages for the interim period is concerned, the said order of the labour court is not required to be interfered with by this Court. Consequently, the order of reinstatement with fresh

appointment is also not required to be interfered with by this Court. It is not in dispute that the workman has already tendered apology, in writing, accepting the alleged act on her part. Being a nurse, she has acted in an irresponsible manner, which is highlighted by the Labour Court in para 6 of the award. Looking to the nature of the case, the Labour Court has ultimately interfered with the penalty by resorting to Section 11-A of the Act though there is no mention about the same in the award. In my view, considering the judgement and award of the labour court and facts and circumstances of the case, it cannot be said that the Labour Court has committed any error of law or of jurisdiction while not granting the benefit of back wages for the entire intervening period.

7 The next question, which arises for consideration, is whether the Labour Court is justified in passing an order of reinstatement by giving fresh appointment order, in favour of the concerned workman. After considering the evidence, the Labour Court has ultimately found that in order to give one more chance to the concerned workman, it would be just and proper to give one more opportunity to the workman. As stated earlier, this order can be treated as an order under Section 11A of the Industrial Disputes Act, 1947. Since the Labour Court has not granted the benefit of back wages for the intervening period and passed an order giving fresh appointment to the workman, and pursuant to the said order the management has addressed communication to the workman asking her to resume her duty, in my view, the said order is also not required to be interfered with by this Court.

8 In view of what is stated above, I do not find any substance in any of these petitions and the order of the Labour Court is required to be confirmed and it is accordingly confirmed.

At this stage, it is argued by Mr Master that the concerned workman has never tried to resume her duty, even though the management wrote a letter to her, asking her to resume duty. It is submitted by him that, perhaps, she is gainfully employed elsewhere and, therefore, she is not interested in the job. In support of his argument, Mr Master has relied upon letter dated 20.2.2003. It is argued by Mr Master that in view of the subsequent cause of action, the management can terminate her services, again. However, in the present proceedings, this Court is not concerned with the aforesaid subsequent event. If there is any change of

circumstance, it is always open for the management to act in accordance with law. If, in spite of the request of the management, the concerned workman has not tried to resume her duty, naturally, the workman cannot insist for back wages for the aforesaid period. However, I am not adjudicating this aspect in the present proceedings and this order is confined to the challenge to the award of the Labour Court only.

In view of what is stated above, both the petitions are dismissed. Rule is discharged in each of the petitions. No order as to costs.

(P.B.Majmudar, J.)
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